



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

May 6, 1996

Ms. Janie D. Fields, M.P.A.
Executive Director
Children's Trust Fund of Texas Council
8929 Shoal Creek Boulevard, Suite 200
Austin, Texas 78757-6854

Letter Opinion No. 96-047

Re: Whether the legislature may impose
certain restrictions on expenditures of the
Children's Trust Fund of Texas Council and
related questions (ID# 35255)

Dear Ms. Fields:

Chapter 74 of the Human Resources Code establishes the Children's Trust Fund of Texas Council (the "council") as a state agency and authorizes it to administer a program of grants for prevention of child abuse and neglect. Hum. Res. Code §§ 74.002-.003. Funding for the grants derives from the children's trust fund (the "children's trust fund" or "trust fund"), which is supported by \$12.50 of each fee for a marriage license or declaration of informal marriage collected by county clerks. *Id.* § 74.006; Local Gov't Code § 118.022. The county clerk must forward the money to the comptroller, who deposits it "to the credit of the children's trust fund." Local Gov't Code § 118.022. Subsection (a) of section 74.006 establishes the children's trust fund "as a trust fund in the State Treasury," and subsection (b) provides that "[t]he legislature may not appropriate the money contained in the trust fund."

The Children's Trust Fund of Texas Council operating fund (the "operating fund") is established by section 74.007(a) of the Human Resources Code as a special fund in the state treasury, subject to legislative appropriation to "carry out the provisions of this chapter." Hum. Res. Code § 74.007(a), (c). Section 74.006(c) states that the council may transfer money from the trust fund to the operating fund to finance child abuse prevention programs. Money is transferred each month from the trust fund to the appropriated operating fund to finance the programs and operations of the council.

The Seventy-fourth Legislature adopted two bills affecting the children's trust fund. House Bill 982 amended several provisions of chapter 74, Human Resources Code. Act of May 29, 1995, 74th Leg., R.S., ch. 902, 1995 Tex. Sess. Law Serv. 4427. House Bill 3050 excepted many dedicated funds, including the children's trust fund, from consolidation with the general revenue fund.¹ Act of May 26, 1995, 74th Leg., R.S., ch.

¹In Letter Opinion 95-4 (1995), issued during the regular session of the Seventy-fourth Legislature, we concluded that that dedicated revenue source for the children's trust fund would cease to exist on August 31, 1995, unless the legislature rededicated it before that date. The legislature included in

1058, § 7, 1995 Tex. Sess. Law Serv. 5226, 5227; House Comm. on Appropriations, Bill Analysis, C.S.H.B. 3050, 74th Leg., R.S. (1995). House Bill 3050 also provides that funds dedicated for a particular purpose or entity may be spent only to the extent that they are appropriated for that purpose or entity. Act of May 26, 1995, 74th Leg., R.S., ch. 1058, § 18, 1995 Tex. Sess. Law Serv. 5226, 5229 (codified at Gov't Code § 403.095(a)).

You inquire about a conflict between provisions of House Bills 982 and 3050. Your first and second questions are as follows:

1. If by statute, the Legislature is prohibited from appropriating funds from the trust fund . . . , by what authority is the Legislature able to limit the amount of funds CTF [the council] may transfer and spend on its programs?
2. New language limits the CTF Council to transferring from the trust fund only the amount equal to the income deposited in the trust fund in the previous year. By what authority can the Legislature limit the transfers from the trust fund?

Section 74.006(a) establishes the trust fund "in the State Treasury." Article VIII, section 6 of the Texas Constitution provides that "[n]o money shall be drawn from the treasury but in pursuance of specific appropriations made by law."² The appropriation of state money is a legislative function. *Bullock v. Calvert*, 480 S.W.2d 367 (Tex. 1972). Since section 74.006(b) of the Human Resources Code provides that the legislature may not appropriate the trust fund, the trust fund is not subject to appropriation and remains in the treasury. The marriage license fees placed in the trust fund are transferred to the operating fund, from which the legislature appropriates funds to the council to implement chapter 74 of the Human Resources Code.

You point out that House Bill 982 increased the amount of the trust fund that the council could transfer to the operating fund each year. Section 74.006(c) of the Human Resources Code formerly provided that, during a fiscal year, the council could not transfer to the operating fund "more than 50 percent of the money that was contained in the trust fund on the first day of that fiscal year." Act of May 25, 1987, 70th Leg., R.S., ch. 729,

(footnote continued)

House Bill 3050 a provision effective August 30, 1995, rededicating the revenue source to the children's trust fund. Act of May 26, 1995, 74th Leg., R.S., ch. 1058, § 7, 1995 Tex. Sess. Law Serv. 5226, 5227.

²Trust funds may be excepted from the requirement in article VIII, section 6 of the Texas Constitution that money be drawn from the treasury only by legislative appropriation. *Friedman v. American Sur. Co.*, 151 S.W.2d 570 (Tex. 1941); Attorney General Opinions MW-393 (1981), O-3711 (1942). The legislature may also require that trust funds go through the appropriation process. Attorney General Opinions DM-145 (1992) at 5-6, JM-772 (1987) at 6-7 & n.3, MW-206 (1980), H-610 (1975).

§ 4, 1987 Tex. Gen. Laws 2621, 2622. As amended by House Bill 982, this provision now reads in part:

The council may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year, the council may not transfer more than the amount deposited to the credit of the fund from any source, including interest and the amount credited under Section 118.022, Local Government Code, during the preceding fiscal year.

Act of May 29, 1995, 74th Leg., R.S., ch. 902, § 3, 1995 Tex. Sess. Law Serv. 4427, 4427-28 (typeface and symbols indicating amended language are omitted); *see also* Fiscal Note, H.B. 982, 74th Leg., R.S. (1995) (stating that council would have discretion over amounts transferred between trust and operating funds).

The legislature did not appropriate the full amount of money that the amended section 74.006(c) authorizes the council to transfer from the trust fund to the operating fund. *See* General Appropriations Act, 74th Leg., R.S., ch. 1063, art. II, 1995 Sess. Law Serv. 5242, 5373-74 (appropriation to Children's Trust Fund of Texas Council). You wish to know by what authority the legislature may appropriate from the operating fund less than the full amount that the council may transfer to it.

Money may be drawn from the treasury only pursuant to an appropriation made by law, Tex. Const. art. VIII, § 6, where pre-existing law authorizes the expenditure, *id.* art. III, § 44. Because of constitutional restrictions on withdrawing money from the treasury, the legislature's funding obligations are generally limited to the amount it appropriates, even though a general law may authorize the appropriation of a larger amount. *See Edgewood Indep. Sch. Dist. v. Meno*, 893 S.W.2d 450, 470 (Tex. 1995). A statute that creates an office or employment and sets the compensation for it is not in itself an appropriation, and the incumbent will not receive the full compensation authorized by statute unless the legislature appropriates that amount. *Pickle v. Finley*, 44 S.W. 480 (Tex. 1898); *Mutchler v. Texas Dep't of Public Safety*, 681 S.W.2d 282 (Tex. App.—Austin 1984, no writ); Attorney General Opinion JM-115 (1983). Section 74.006(c) of the Human Resources Code is not itself an appropriation to the council. Since the operating fund is a fund in the state treasury, it is subject to the restrictions of article VIII, section 6 of the Texas Constitution. Although the legislature is authorized to appropriate to the council the full amount of revenue that may be transferred to the operating fund pursuant to section 74.006(c), it is not required to do so.

Your third question is as follows:

3. Contingent on passage of H.B. 3050, the Legislature appropriated an additional \$1.5 million from the trust fund to the operating account. The General Appropriations Act (HB 1) appropriated

about \$3.2 million for the trust fund for 1996-97. Are these legislative actions in conflict with 74.006(b) and (c) as amended?

You refer to the following provision of House Bill 982:

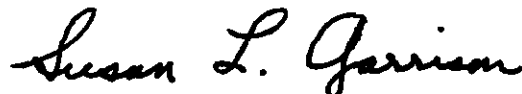
If H.B. No. 3050 is enacted by the 74th Legislature at its regular session and becomes law, *in addition to other amounts appropriated for the fiscal biennium ending August 31, 1997, there is hereby appropriated to the Children's Trust Fund of Texas Council for the purpose of implementing this Act* the receipts to the Children's Trust Fund of Texas Council Operating Fund No. 541, not to exceed \$750,000 in the fiscal year ending August 31, 1996, and not to exceed \$750,000 in the fiscal year ending August 31, 1997.

Act of May 29, 1995, 74th Leg., R.S., ch. 902, § 6, 1995 Tex. Sess. Law Serv. 4427, 4428 (*emphasis added*); *see* Conference Comm. Report, H.B. 982, 74th Leg., R.S. (1995). The money appropriated by House Bill 982, together with the amount appropriated to the council in the General Appropriations Act, comprises the total appropriation to the council for the fiscal biennium ending August 31, 1997. We find no conflict between the provisions appropriating funds to the council and section 74.006(b) and (c), Human Resources Code. As already stated in answer to your first and second questions, the legislature is not obligated to appropriate the full amount of money authorized by section 74.006(c) of the Code. The council may spend only the funds specifically appropriated to it by the legislature.

S U M M A R Y

The Children's Trust Fund of Texas Council, established by chapter 74 of the Human Resources Code, administers a program of grants for prevention of child abuse and neglect. Funding for the council's work derives from marriage license fees dedicated by statute to the children's trust fund in the treasury and transferred from the trust fund to an operating fund for appropriation by the legislature. The legislature is not required to appropriate from the operating fund to the council the full amount of revenue that may be transferred to operating fund.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee